MAIDIN v. WELFARE INSURANCE CO. LTD.

[O.C.J. (Pawan Ahmad J.) April 27, 1968]
[Malacca — Originating Motion No. 3 of 1966]

Arbitration — Award — Time for making award — Enlargement of time — Award remitted by court — Whether arbitrator has power to enlarge time — Award made out of time — Nullity — Arbitration Ordinance, 1950, s. 10, First Schedule, clause (3).

In an action brought by the respondent against the applicants, the latter successfully applied for a stay of proceedings under section 5 of the Arbitration Ordinance, 1950, so that the matter may be referred to arbitration. An arbitrator was duly appointed and he proceeded to hear the dispute. Three days before the expiry of the period of three months from the date of entering on the reference, the arbitrator, in writing and without the order of court, extended the time for the making of the award to 31st December, 1965. The award was made on December 23, 1965. In an application by the applicants for leave to enforce the award, the respondent contended that the award was a nullity as it was made more than five months after the arbitrator had entered on the reference, contrary to the provisions of clause (3) of the First Schedule read with section 10 of the Arbitration Ordinance, 1950.

Held, dismissing the application: (1) except where time is enlarged under section 10 of the Arbitration Ordinance, 1950, where a matter is referred to arbitration by the court, an award must be made within three months from the date of entering on the reference, and the arbitrator cannot arbitrarily in writing extend the time for the making of the award;

(2) the award made by the arbitrator in this case was a nullity as it was made more than three months after the date of entering on the reference, and time was not enlarged by an order of court under section 10 of the Arbitration Ordinance, 1950.

Case referred to:—

(1) *Canada Sugar Refining Co.* v. *The Queen* [1898] A.C. 735 at p. 741.

ORIGINATING MOTION.

Wong Seng Chow for the applicants.

D. A. Devadason for the respondent.

Cur. Adv. Vult.

Pawan Ahmad J.: This is an application by the defendants under section 13 of the Arbitration Ordinance 1950 for leave to enforce the award of the arbitrator. Briefly, the facts of the case are as follows:—

On 10th November 1964 the respondent filed an action for damages against the applicants in the High Court Malacca in Civil Suit No. 151 of 1964. On 28th November 1964 the applicants successfully applied for a stay of further proceedings pursuant to section 5 of the Arbitration Ordinance 1950. Subsequently, an arbitrator was duly appointed by agreement of both parties, and he then proceeded to hear the dispute. The hearing was completed on the 15th July 1965 and the award in writing was finally made on the 23rd December 1965.

What happened in this case is that on 12th October 1965, three days before the expiry of the period of three months from the date of entering on the reference, the arbitrator in writing arbitrarily extended the time of making the award to 31st December 1965. It is the contention of the respondent that the award is a nullity because it was made more than five months after the arbitrator had entered on the reference contrary to the provisions of clause (3) of the First Schedule read with section 10 of the Arbitration Ordinance 1950.

Clause (3) of the First Schedule reads:—

"The arbitrators shall make their award in writing within three months after entering on the reference or after having been called on to act by notice in writing from any party to the submission or on or before any later day to which the arbitrators by any writing signed by them may enlarge the time for making the award";

and section 10 reads:—

"The time for making an award may be enlarged by order of the court, whether the time for making the award has expired or not."

The main issue in this case before the court, in my view, therefore, is whether or not the arbitrator was empowered to extend the time for making the award in the manner he had done. On reading clause (3) of the First Schedule independently of the other provisions of the Ordinance, it would appear at first that the arbitrator has the power of enlarging the time for making the award by any writing signed by him. On the other hand, section 10 unequivocally gives power to the court to enlarge the time for making the award.

According to the canon of construction those two provisions would have to be read together to make the Ordinance consistent. In the case of *Canada Sugar Refining Co.* v. *The Queen,*(1) Lord Davey in his judgment at page 741 said:—

"Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute. . . ."

Basing on the reasoning in this case, I am of the opinion that clause (3) will have to be read in the light of section 10 and that the nett result would be that the enlargement of time for making the award beyond the statutory period of three months can only be made by the arbitrator in writing after obtaining the order of the court, whether the time for making the award has expired or not.

Further, under the heading: "Time for making award" at paragraph 95, page 42 of volume 2 of *Halsbury's* Laws of England, 3rd Edition, it is stated that:—

"Except where an award is remitted by the court, when the new award must be made within three months of the order, and subject to anything to the contrary in the arbitration agreement, an arbitrator or umpire has power to make an award at any time."

The present dispute was remitted by the court for the decision of the arbitrator and there-

fore in my view the award must be made within three months from the date the arbitrator entered on the reference except in those cases where the time for making the award has been enlarged by the order of the court under section 10. The arbitration agreement in this case is also silent about the time for making the award. I therefore find in this case that the arbitrator had no power to enlarge the time for making the award arbitrarily.

The other point for the court to consider is whether the award made after a lapse of more than five months after entering on the reference as extended by the arbitrator arbitrarily amounts to a nullity. Under the heading: "Grounds for opposing application" at paragraph 111 page 50 of volume 2 of *Halsbury's* Laws of England, 3rd Edition, it is stated that:—

"In answer to an application for leave to enforce an award, the respondent may set up that the award is a nullity. . . ."

In my view the power of the arbitrator under the Ordinance in this case extends only to a period of three months after entering on the reference by reason of clause (3) of the First Schedule read together with section 10 unless time was extended under section 10. In this case no step was taken for extension of time under section 10 even though this was pointed out by counsel for the respondent to the arbitrator long before the award was made. In view of these circumstances, I find that at the time when the award was made the arbitrator had no jurisdiction to exercise and therefore the award is a nullity.

For these reasons the application is dismissed with costs.

Application dismissed.

Solicitors: *D.A. Devadason; Shearn, Delamore & Co.*

TANG LEW KENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat J.) May 13, 1968]
[Perak — Criminal Appeal No. 11 of 1968]

Evidence — Witness — Incriminatory statement — Criminal proceedings — Evidence Ordinance, 1950, s. 132.

Evidence — Hearsay — Interpreter — Statement made to president of sessions court through interpreter — Interpreter not called — Admissibility of.

This was an appeal by the appellant against his conviction on a charge of being in possession of samsu on which the excise duty leviable by law had not been proved to have been paid, an offence under section 73(1)(a) and punishable under section 73(1)(i) of the Excise Act, 1961. In an earlier trial against another person charged with the possession of the same samsu, the appellant appeared as a defence witness and made a statement which incriminated him. There was evidence of the appellant's reluctance to make the statement until the defence counsel assured him that he came under the protection of section 132 of the Evidence Ordinance, 1950. The statement of the appellant was made in Hokkien, a language which the president of the sessions court did not understand. It was interpreted by an interpreter into English and recorded in its English form. The English form was produced at the trial of the appellant and relied upon as proof of his possession of the samsu. The interpreter was not called to give evidence. On the question of the admissibility of the record of the appellant's testimony:

Held, allowing the appeal: (1) section 132 of the Evidence Ordinance did not preclude the record of the appellant's testimony from being admissible against him. The section excludes an incriminatory statement made by a witness from being admissible in a subsequent criminal proceedings against him only where the witness had been compelled by the court to make such statement. This is clear from the language of section 132(2) of the Ordinance. In this case no compulsion was exercised by the court;

(2) the testimony of the appellant was recorded by the president of the sessions court from what was told to him by the interpreter. As the interpreter himself was not called, the record of the appellant's testimony was hearsay and inadmissible.

R. v. *Attard* (3) followed.

Cases referred to:—

(1) *Toh Ah Lok and Mak Thim* v. *R.* [1949] M.L.J. 54.

(2) *Wong Kok Keong* v. *R.* [1955] M.L.J. 13 at p. 16.

(3) *R.* v. *Attard* (1959), 43 Cr. App. R. 90.

CRIMINAL APPEAL.

Soo Wai Sun for the appellant.

Eusoff bin Chin (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chang Min Tat J.: This is an appeal against the appellant's conviction in the sessions court at Teluk Anson on a charge of being in possession of 2 gallons of samsu, on which the excise duty leviable by law amounting to $39.04 had not been proved to have been paid, an offence under section 73(1)(a) and punishable under section 73(1)(i) of the Excise Act No. 34 of 1961. The sentence was a fine of $400, in default of 6 months' imprisonment.

At the trial, reliance for proof of possession was placed on the statement made by the appellant at the trial of one Beh Sai Tick, who was charged with possession of the same illicit samsu. At this earlier trial, the appellant appeared as a defence witness, and in the course of his evidence said:—

"At the time I gave accused the tins, I knew that the tins did not contain petrol. It contained samsu. This samsu was made by my father. My father told me to take it to Ah Choon. I was waiting for a bus to come when I met accused."

Beh Sai Tick was acquitted and discharged. On the appellant's admission, the deputy public prosecutor considered that there was a case against him and he had the appellant charged.

The then president of the sessions court, Teluk Anson, who tried Beh Sai Tick was called